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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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12 MICHAEL WHITE,
13 Plaintiff,
14 v.
15 FBI,
16 Defendant.
17

No. 2:23-cv-08457-VBF-AJR

**ORDER DISMISSING FIRST
AMENDED COMPLAINT WITH
LEAVE TO AMEND**

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19 **I.**
20 **INTRODUCTION**

21 On October 6, 2023, Michael White (“Plaintiff”), a California resident
22 proceeding *pro se*, filed a “Pleading Page For A Complaint,” construed as a
23 purported civil rights action (“Complaint”). (Dkt. 1 at 1.) The Complaint named
24 only the “FBI” as a Defendant. (*Id.*)

25 On October 19, 2023, the Court issued an order dismissing the Complaint
26 with leave to amend. (Dkt. 5.) On November 16, 2023, Plaintiff failed a “Request
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1 for Damages,” construed as the operative First Amended Complaint (“FAC”).¹
 2 (Dkt. 6.) The FAC again names only the FBI as a Defendant (“FBI” or
 3 “Defendant”). (Id.)

4 5 **II.**

6 **PLAINTIFF’S ALLEGATIONS IN THE FIRST AMENDED COMPLAINT**

7 The rambling, garbled FAC is even more unintelligible than the original
 8 Complaint. From what the Court can decipher, the factual allegations of the FAC
 9 appear substantively identical to those in the original Complaint. Plaintiff alleges
 10 that he is being targeted by the FBI as a “Hebrew Israelite and not a Negro ethnic”
 11 for the past 34 years in violation of his First Amendment rights. (Id. at 1.) Plaintiff
 12 alleges that the FBI has committed the following on Plaintiff: attempted murder,
 13 stalking 24/7, poisoning his food, phone wiretaps, computer taps and hacks,
 14 defamation of character, genocide, electronic and satellite surveillances, stealing
 15 mail, and bribery. (Id. at 2.) Plaintiff further alleges that because of the FBI, “many
 16 companies” including the NFL, Ford Corporation, Chase Bank, Walmart, and
 17 Ralph’s have all “tried to murder” Plaintiff. (Id.) The FAC contains no prayer for
 18 relief. (Id.)

19 20 **III.**

21 **STANDARD FOR DISMISSAL OF PRO SE COMPLAINT**

22 Under Federal Rule of Civil Procedure 12(b)(6), a trial court may dismiss a
 23 claim sua sponte “where the claimant cannot possibly win relief.” Omar v. Sea-
 24 Land Serv., Inc., 813 F.2d 986, 991 (9th Cir. 1987); see also Baker v. Director, U.S.
 25 Parole Comm’n, 916 F.2d 725, 726 (D.C. Cir. 1990) (per curiam) (adopting the

26
 27 ¹ Because the FAC and attachments thereto do not bear consecutive page
 28 numbers, the Court uses the CM/ECF pagination.

1 Ninth Circuit’s position in Omar and noting that such a *sua sponte* dismissal “is
 2 practical and fully consistent with plaintiff’s rights and the efficient use of judicial
 3 resources”). The Court’s authority in this regard includes *sua sponte* dismissal of
 4 claims against defendants who have not been served and defendants who have not
 5 yet answered or appeared. See Abagnin v. AMVAC Chemical Corp., 545 F.3d 733,
 6 742-43 (9th Cir. 2008); see also Reunion, Inc. v. F.A.A., 719 F. Supp. 2d 700, 701
 7 n.1 (S.D. Miss. 2010) (“[T]he fact that [certain] defendants have not appeared and
 8 filed a motion to dismiss is no bar to the court’s consideration of dismissal of the
 9 claims against them for failure to state a claim upon which relief can be granted,
 10 given that a court may dismiss any complaint *sua sponte* for failure to state a claim
 11 for which relief can be granted pursuant to Rule 12(b)(6).”).

12 Moreover, when a plaintiff appears *pro se* in a civil rights case, the court
 13 must construe the pleadings liberally and afford the plaintiff the benefit of any
 14 doubt. Karim-Panahi v. Los Angeles Police Dep’t., 839 F.2d 621, 623 (9th Cir.
 15 1988). In giving liberal interpretation to a *pro se* complaint, the court may not,
 16 however, supply essential elements of a claim that were not initially pled. Pena v.
 17 Gardner, 976 F.2d 469, 471-72 (9th Cir. 1992). A court must give a *pro se* litigant
 18 leave to amend the complaint unless it is “absolutely clear that the deficiencies of
 19 the complaint could not be cured by amendment.” Karim-Panahi, 839 F.2d at 623
 20 (citation and internal quotation omitted).

21 For the reasons discussed below, the Court DISMISSES the FAC with leave
 22 to amend.

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IV. DISCUSSION

A. The FAC Violates Federal Rule of Civil Procedure 8.

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain ““a

1 short and plain statement of the claim showing that the pleader is entitled to relief,’
 2 in order to ‘give the defendant fair notice of what the . . . claim is and the grounds
 3 upon which it rests.’” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007).
 4 Rule 8(e)(1) instructs that “[e]ach averment of a pleading shall be simple, concise,
 5 and direct.” A complaint violates Rule 8 if a defendant would have difficulty
 6 responding to the complaint. Cafasso, U.S. ex rel. v. General Dynamics C4
 7 Systems, Inc., 637 F.3d 1047, 1059 (9th Cir. 2011).

8 Here, once again, Plaintiff’s pleaded allegations in the FAC fail to comply
 9 with Rule 8. The body of the FAC again is almost entirely vague, nonsensical, and
 10 confusing as to leave uncertain the nature of Plaintiff’s claims. Indeed, it is largely
 11 unintelligible. There are no clear factual allegations setting forth the particular
 12 claims Plaintiff wishes to pursue, the facts supporting each individual claim, and the
 13 specific defendant(s) who are allegedly liable under each particular claim. For
 14 example, Plaintiff does not set forth any factual allegation concerning what
 15 defamatory statements were made by whom or who attempted to kill, stalk, poison,
 16 threaten, bribe, or commit genocide on Plaintiff. The thirty (30) page exhibits
 17 attached to the FAC confuse rather than clarify Plaintiff’s allegations. (Dkt. 6 at 3-
 18 32.) A complaint is subject to dismissal for failure to state a claim if “one cannot
 19 determine from the complaint who is being sued, for what relief, and on what
 20 theory.” McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996); see also Cafasso,
 21 U.S. ex rel., 637 F.3d at 1059; see, eg., Steinley v. Health Net, Inc., 2018 WL
 22 6985318, at *5 (C.D. Cal. Dec. 4, 2018) (“Generally, ‘[u]ndifferentiated pleading
 23 against multiple defendants is improper’ because it fails to give each defendant
 24 notice of the specific allegations and claims that pertain to it.”) (citation omitted);
 25 E.D.C. Tech., Inc. v. Seidel, 2016 WL 4549132, at *9 (N.D. Cal. Sept. 1, 2016)
 26 (“Courts consistently conclude that undifferentiated pleading against multiple
 27 defendants is improper”) (citations, internal brackets and quotations omitted).

28 Accordingly, Plaintiff’s FAC again consists of an unrelated panoply of

1 unconnected thoughts with little or no relation to valid federal claims, all of which,
 2 as presented, are legally and/or factually patently frivolous.

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 4 **B. The FBI Is An Improper Defendant.**

5 As the Court previously advised Plaintiff, because the FAC names only a
 6 federal government agency as Defendant, the Court construes this action as brought
 7 pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971)
 8 (“Bivens”), rather than 42 U.S.C. § 1983. See, e.g., Carlson v. Green, 446 U.S. 14,
 9 18 (1980) (allowing Bivens action for violation of Cruel and Unusual Punishment
 10 Clause of Eighth Amendment); Van Strum v. Lawn, 940 F.2d 406, 409 (9th Cir.
 11 1991) (replacing state actor sued under § 1983 with federal actor sued under
 12 Bivens). Bivens permits constitutional claims against federal officials, in their
 13 individual capacities, for actions taken under color of federal law. See Bivens, 403
 14 U.S. at 397.

15 However, civil rights action under Bivens may be brought only against
 16 federal employees, not the United States or its agencies. Corr. Services Corp. v.
 17 Malesko, 534 U.S. 61, 72 (2001); id. at 70-71 (because the “purpose of Bivens is to
 18 deter individual federal officers from committing constitutional violations,” the
 19 “deterrent effects of the Bivens remedy would be lost” if the Court “were to imply a
 20 damages action directly against federal agencies”). As such, “no Bivens-like cause
 21 of action is available against federal agencies or federal agents sued in their official
 22 capacities.” Ibrahim v. Dept. of Homeland Sec., 538 F.3d 1250, 1257 (9th Cir.
 23 2008).

24 Here, as the Court advised, to the extent Plaintiff alleges Bivens claims
 25 against the FBI, the claims must be construed as claims against the United States.
 26 See Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985). “Absent a waiver,
 27 sovereign immunity shields the Federal Government and its agencies from suit.”
 28 F.D.I.C. v. Meyer, 510 U.S. 471, 475 (1993). The United States has not waived

1 sovereign immunity with respect to constitutional claims for damages. Rivera v.
 2 United States, 924 F.2d 948, 951 (9th Cir. 1991); Thomas-Lazear v. Fed. Bureau of
 3 Investigation, 851 F.2d 1202, 1207 (9th Cir. 1988). The doctrine of sovereign
 4 immunity thus bars constitutional claims for damages against the FBI. See Hodge v.
 5 Dalton, 107 F.3d 705, 707 (9th Cir. 1997) (doctrine of sovereign immunity extends
 6 to federal employees in their official capacities).

7
 8 **C. Plaintiff Fails To State A Claim Against Individual Defendants.**

9 To establish a civil rights violation, a plaintiff must show either the
 10 defendant's direct, personal participation in the constitutional violation, or some
 11 sufficient causal connection between the defendant's conduct and the alleged
 12 violation. See Starr v. Baca, 652 F.3d 1202, 1205-06 (9th Cir. 2011).

13 As the Court previously advised Plaintiff, to the extent Plaintiff alleges that
 14 unnamed FBI agents violated his constitutional rights, generally, courts do not favor
 15 actions against "unknown" defendants. Wakefield v. Thompson, 177 F.3d 1160,
 16 1163 (9th Cir. 1999). However, a plaintiff may sue unnamed defendants when the
 17 identity of the alleged defendants is not known before filing the complaint.
 18 Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). If that is the case, a court
 19 gives the plaintiff "the opportunity through discovery to identify unknown
 20 defendants, unless it is clear that discovery would not uncover the identities." Id. A
 21 plaintiff must diligently pursue discovery to learn the identity of unnamed
 22 defendants.

23 Here, however, any claims against unnamed FBI agent(s), if any, must be
 24 dismissed because the FAC once again fails to state what each of these defendants
 25 separately did in their individual capacity to violate Plaintiff's rights. To state a
 26 claim against more than one unnamed defendant, Plaintiff must identify each Doe
 27 Defendant as "Doe No. 1, Doe No. 2," etc., in the body of the FAC and show how
 28 each defendant individually participated in the alleged constitutional violations,

1 whether or not Plaintiff knows the defendant's name. If Plaintiff wishes to pursue
2 his claims, he must make an effort to identify the FBI agent's names.

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4 **IV.**
5 **ORDER**

6 The FAC is dismissed with leave to amend. On or before **December 21,**
7 **2023**, Plaintiff shall file a Second Amended Complaint ("SAC") that attempts to
8 remedy the identified defects. If Plaintiff chooses to file a SAC, it should bear the
9 docket number assigned to this case (2:23-cv-08457-VBF-AJR), be labeled "Second
10 Amended Complaint," and be complete and of itself without reference in any
11 manner to the original Complaint, the FAC, or any other documents (except any
12 documents that Plaintiff chooses to attach to the SAC as exhibits). Plaintiff is
13 encouraged to state his claims in simple language and provide only a brief statement
14 of supporting facts, omitting facts that are not relevant. Should Plaintiff decide to
15 file a SAC, he is encouraged to utilize the form complaint attached to this Order.


16 **Plaintiff is explicitly cautioned that failure to timely file a SAC, or failure**
17 **to correct the deficiencies described above, may result in a recommendation**
18 **that this action be dismissed without prejudice for failure to prosecute and/or**
19 **obey Court orders pursuant to Federal Rule of Civil Procedure 41(b).** Plaintiff
20 is further advised that if he no longer wishes to pursue this action, he may
21 voluntarily dismiss the action by filing a Notice of Dismissal in accordance with
22 Federal Rule of Civil Procedure 41(a)(1). A form Notice of Dismissal is attached
23 for Plaintiff's convenience.

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1 IT IS SO ORDERED.

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3 DATED: November 21, 2023

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5 HON. A. JOEL RICHLIN
6 UNITED STATES MAGISTRATE JUDGE

7 Attachments:

8 CV-09, Notice of Dismissal Pursuant to Federal Rules of Civil Procedure 41(a) or (c).
9 Pro Se 15, Civil Rights Complaint Pursuant to U.S.C. § 1983